

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Winstar Wireless, Inc. Application to
Discontinue Domestic and International
Telecommunications Services

Comp. Pol. File No. W-P-D-572

ORDER

Adopted: April 18, 2002

Released: April 18, 2002

By the Wireline Competition Bureau:

1. In this Order, we grant Winstar Wireless Inc.'s (Winstar) application to discontinue providing certain domestic telecommunications services to approximately three thousand six hundred (3,600) customers in Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Massachusetts, Maryland, Michigan, Minnesota, New Jersey, New York, Pennsylvania, Texas, Virginia, and Washington, pursuant to section 214(a) of the Communications Act of 1934, as amended,¹ and section 63.71 of the Federal Communications Commission's (FCC or Commission) rules.² As explained in further detail below, authority to discontinue is granted consistent with and subject to Winstar's agreement to provide service for a longer period in order to accommodate the concerns of customers that have filed comments in this proceeding, and to facilitate these customers' transition to other carriers.

BACKGROUND

2. On March 18, 2002, Winstar filed an application (Application) with the Commission requesting authority under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue domestic and international telecommunications services³ to approximately 3,600 customers in the states of Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Massachusetts, Maryland, Michigan, Minnesota, New Jersey, New York, Pennsylvania, Texas, Virginia, and Washington. Winstar's Application states that it seeks authority to discontinue providing facilities-based, local and interexchange services, which it presently provides by leasing wireline facilities from an underlying carrier. The Application clarifies

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. § 63.71.

³ Discontinuance of international service is governed by 47 C.F.R. § 63.19.

that Winstar will continue to offer its facilities-based fixed wireless services to commercial subscribers in buildings where it has wireless facilities, and will also provide certain other services, including resold local and interexchange services, private line services, and broadband connectivity. Winstar's Application also explains that it will continue to offer its wireline and fixed wireless facilities-based services to government customers under its Government Service Administration (GSA) Metropolitan Area Acquisition (MAA) contracts. According to the Application, Winstar mailed out individual written notices of the proposed discontinuance to each affected customer on March 15, 2002, as required by Commission rules.⁴

3. By Public Notice dated March 18, 2002, the Commission notified the public that, in accordance with 47 C.F.R. § 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of this notice, unless the Commission notified Applicants that the grant would not be automatically effective.⁵ Accordingly, the automatic grant date for this application is April 18, 2002. The Commission received comments from ninety-two (92) Winstar customers.

DISCUSSION

4. Section 214(a) of the Communications Act, as amended, states that “[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby.”⁶ The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.⁷ As the Commission has stated, “we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,”⁸ and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.⁹

⁴ See 47 C.F.R. § 63.71(a)(5)(i).

⁵ *Comments Invited on Winstar Wireless Inc. Application to Discontinue Domestic and International Telecommunications Services*, Public Notice, NSD File No. W-P-D-572, DA 02-650 (rel. March 18, 2002).

⁶ 47 U.S.C. § 214(a).

⁷ See 47 U.S.C. § 201.

⁸ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (Competitive Carrier First Report and Order)*, 85 FCC 2d 1, 49 (1980).

⁹ See 47 C.F.R. § 63.71(a); see, e.g., *AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

5. The Commission has considerable discretion in making a finding under section 214.¹⁰ We find that the record in this proceeding makes clear that, to the extent commenters allege they are unable to migrate within the 31-day period, Winstar has provided sufficient assurances that it will maintain service for these customers for a reasonable, additional period of time in order to allow them to migrate. In an *Ex Parte* letter filed on April 17, 2002, Winstar indicates that approximately one third of its customers who filed comments have successfully migrated to other carriers.¹¹ Moreover, Winstar has represented that for those commenters who have not been successfully migrated by today, Winstar will continue to provide service to those customers during the transition process.¹² Thus, on the basis of this representation, we find that the proposed discontinuance will not result in an unreasonable degree of customer hardship, and, therefore, that there will be no adverse effect on the public convenience and necessity. Accordingly, Winstar may discontinue service on April 18, 2002, to the customers affected by this application in a manner consistent with its filed representations in this proceeding. Winstar also must notify the Commission when it has fully migrated the customers affected by this notice.

ORDERING CLAUSE

6. Accordingly, pursuant to sections 1, 4(1), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of Winstar to discontinue domestic telecommunications IS GRANTED, consistent with its filed representations in this proceeding, and its obligation to affirmatively report when all customers have been successfully migrated to other carriers.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Bureau Chief
Wireline Competition Bureau

¹⁰ *FCC v. RCA Communications, Inc.*, 73 S.Ct. 998, 1002 (1953).

¹¹ See Letter from Joseph M. Sandri, Jr., Sr. Vice President and Regulatory Counsel, Winstar, to Ms. Magalie Roman Salas, Secretary, FCC (April 17, 2002).

¹² *Id.*